IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4711 of 2003

For Approval and Signature:
HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

M M PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4711 of 2003
MR IS SUPEHIA for Petitioner No. 1
MR ND GOHIL, ASSTT.GOVERNMENT PLEADER for Respondent No. 1
RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 18/10/2004

ORAL JUDGEMENT

In this petition the petitioner has challenged the order dated 26.9.2002, passed by the State Government, by which monthly pension of the petitioner was reduced by an amount of Rs. 50 per month for a period of six months.

2. It is not in dispute that the petitioner retired on superannuation from Government service with effect from 28.2.1988 and on the eve of the retirement, the petitioner was served with a charge-sheet dated 24.2.1998. In the said charge-sheet, five allegations were made against the petitioner pertaining to his tenure

as Geologist for the period between 11.6.1986 to 2.4.1990. Upon conclusion of the Departmental enquiry, the Enquiry Officer found that all, except charge article 3, stood not proved and even with respect to charge article 3, the conclusion was that the same is only partly proved.

3. On the basis of the findings of the Enquiry Officer, the Disciplinary Authority, after hearing the petitioner, found that the charge article 3 levelled against the petitioner by the charge-sheet dated 24.2.1998 is partly proved, and eventually therefore by the impugned order dated 26th September, 2002, a penalty of reduction of monthly pension of the petitioner by Rs. 50 for a period of six months was imposed.

4. Aggrieved by the said order of penalty, the petitioner has approached this High Court by filing the present Special Civil Application.

5. In the charge article 3 it is alleged against the petitioner that whenever he is to tour, he was not intimating the Executive Engineer and Assistant Engineer and had thereby exhibited disregard to his duties. It was therefore alleged that the petitioner had breached the provisions of Rule 3(1) and (2) of the Gujarat Civil Service Discipline Rules, 1971 and the provisions of Government Circular dated 19.7.1989. Since even the Disciplinary Authority did not find that the rest of the charges are proved, it is not necessary for this Court to go into the question of the nature of such charges.

6. The Disciplinary Authority in the impugned order accepted the findings of the Enquiry Officer that the above mentioned charge article 3 was partly proved. The Enquiry Officer was pleased to observe that the petitioner while going on tour was not intimating the higher officers and had thereby exhibited disregard to his duties and breached the provisions of the Government Circular dated 19.7.1989.

7. Learned Counsel for the petitioner submits that the Disciplinary Authority gravely erred in imposing penalty in question. He submits that the petitioner had not committed any misconduct and the charge of breach of the conditions of Circular dated 19.7.1989 is wholly baseless. He draws my attention to the Circular dated 19.7.1989 and submits that the same pertains only to the Junior Geologists and Geological Supervisors. He submits that the petitioner was a Class-I officer holding the post of Geologist and therefore, the said Circular did

not apply to him. He submits that the penalty imposed itself suggests that even if the charge is held to have been proved, the same was not of any serious nature and that therefore the same could not have been imposed on a retired officer after such a long period of time. Counsel for the petitioner has also submitted that the enquiry for the alleged misconduct committed during the period of 1986 to 1990 was initiated in the year 1998 and the penalty was imposed in the year 2002. Thus, the proceedings had vitiated on the ground of gross delay and laches.

8. Appearing for the respondent learned Assistant Government Pleader Mr. N.D. Gohil has submitted that the enquiry was conducted after following the required procedure and in consonance with the principles of natural justice. He therefore submits that the penalty imposed by the competent authority should not be interfered with.

9. As noted earlier, the only charge that even according the Disciplinary Authority stood proved against the petitioner was that of petitioner going on tour without informing the superiors, which the authority found was in violation of the Government Circular dated 19.7.1989. A bare perusal of the said Circular would reveal that the same applied to the officers of the level of Junior Geologists and Geological Supervisors. Admittedly the petitioner at the relevant time belonged to Class-I category and was holding the post of Geologist and that therefore, the said Circular had no application in so far as the petitioner's responsibility at the relevant time was concerned. The respondents therefore erred in holding that the petitioner had violated the provisions of the said Circular.

10. Even otherwise I find that ultimate choice of penalty was rather curious. When the petitioner had retired as far back as in February, 1998, award of penalty of reduction of monthly pension of the petitioner by Rs. 50, that too for a period of six months could have been avoided. If the Government was of the opinion that the petitioner had committed serious misconduct, surely the penalty would have been graver. The very fact that by way of penalty the monthly pension of the petitioner was reduced to Rs. 50, that too for a period of six months only, suggests that even the Disciplinary Authority did not find the misconduct of the petitioner serious in any manner. Admittedly, the allegations of misconduct pertains to the period between 1986 to 1990. For the said misconduct, admittedly the charge-sheet was

issued to the petitioner on 24.2.1998 i.e. only 4 days before his retirement on 28.2.1998. For such a charge, finally the order of penalty came to be passed on 26.9.2002.

11. It is however, not necessary for me to go into the question of penalty solely on the ground of delay in initiation and completion of enquiry, since independently of the said finding, I come to the conclusion that the Government erred in holding the said charge to have been proved. In view of the said conclusion, I find that the impugned order dated 26th September, 2002 cannot be sustained and the same is therefore, quashed and set aside. The petition succeeds. Rule is made absolute with no order as to costs.

12. The recovered amount of penalty from the pension shall be refunded to the petitioner.

(Akil Kureshi, J.)

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